

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

DANIEL GRAHAM,)	
<i>Plaintiff,</i>)	
vs.)	
)	Civil No. 1:22-cv-00891-LY
FREEDOM FOREVER TEXAS,)	
LLC,)	
<i>Defendant.</i>)	

Defendant, Freedom Forever Texas, LLC (“Freedom Forever”), submits its Answer and Defenses to the Complaint filed by Plaintiff, Daniel Graham. Freedom Forever denies any allegations contained in the headings of the Complaint.

ANSWER

In response to the allegations in the Complaint, BSM responds as follows.

1. Plaintiff’s Small Claims Case Petition alleges, in the paragraph entitled “Complaint”: “In July 2022, Freedom Forever’s agents called my number which is registered on the DNC six times to solicit solar services in violation of the TCPA.” Freedom Forever denies this allegation in its entirety.
2. Plaintiff’s Small Claims Case Petition alleges, in the paragraph entitled “Damages”: “Plaintiff seeks damages in the amount of \$6,000.00.” Freedom Forever denies that Plaintiff is entitled to any monetary or other

relief in this matter.

DEFENSES

Without assuming the burden of proof where it otherwise rests with Plaintiff, Freedom Forever pleads the following defenses to the Complaint:

FIRST DEFENSE

Plaintiff's Complaint fails to state a claim against Freedom Forever, in whole or in part, upon which relief can be granted.

SECOND DEFENSE

Plaintiff may lack standing to maintain the claims against Freedom Forever asserted in the Complaint, because, among other things, he has not sustained a legal injury.

THIRD DEFENSE

Freedom Forever has complied with the Telephone Consumer Protection Act ("TCPA") and is entitled to each and every defense stated in the Act and any and all limitations of liability.

FOURTH DEFENSE

Plaintiff's claims should be dismissed because Plaintiff cannot establish that the calls he allegedly received were sent via an automatic telephone dialing system.

FIFTH DEFENSE

Plaintiff's claims should be dismissed because the calls Plaintiff allegedly received were sent with extensive human intervention.

SIXTH DEFENSE

Plaintiff consented to receiving the subject calls from Freedom Forever.

SEVENTH DEFENSE

Plaintiff's alleged damages were caused, in whole or in part, by one or more parties for whom BSM is not responsible.

EIGHTH DEFENSE

To the extent Plaintiff asserts his claims under Section 227(b) of the TCPA, such section is unconstitutional pursuant to the First Amendment as to calls alleged to have been placed with an Automatic Telephone Dialing System ("ATDS").

NINTH DEFENSE

Plaintiff's claims may be subject to dismissal pursuant to the doctrines of estoppel and/or waiver.

TENTH DEFENSE

The claims of Plaintiff are barred, in whole or in part, by the doctrine of unclean hands

ELEVENTH DEFENSE

Any damages Plaintiff claims in this matter should be barred or reduced due

to Plaintiff's failure to mitigate such alleged damages.

TWELFTH DEFENSE

To the extent Freedom Forever violated the TCPA – which it denies – any such violations were not willful, thereby limiting Plaintiff's recovery, if any.

THIRTEENTH DEFENSE

To the extent there are contractual agreements relevant to Plaintiff's claims, such agreements contain mandatory arbitration clauses; therefore, Freedom Forever pleads the defense of arbitration.

FOURTEENTH DEFENSE

Freedom Forever hereby gives notice that it intends to rely upon additional defenses that may become available or appear during the proceedings in this case. Freedom Forever additionally reserves the right to amend its Answer and Defenses to assert any such defenses.

WHEREFORE, having fully answered or otherwise responded to the allegations in Plaintiff's Complaint, Freedom Forever respectfully prays that:

1. Plaintiff's Complaint be dismissed in its entirety and with prejudice, and all costs taxed against Plaintiff;
2. Freedom Forever recover such other and additional relief as the Court deems just and appropriate.

DATED: September 6, 2022.

/s/ William J. Akins

William J. Akins

State Bar No. 24011972

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CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2022, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, and also served the Plaintiff by U.S. Mail as follows:

DANIEL GRAHAM
5812 Mossbrook Trl
Dallas, Texas 75252

/s/ William J. Akins

William J. Akins